

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

VIKKI HOLLEY,	:	APPEAL NO. C-160432
Plaintiff-Appellee,	:	TRIAL NO. 15CV-19591
vs.	:	
TATIANA ZHELUDOVA,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This case arises from a dispute over the return of a security deposit. In a sole assignment of error, Tatiana Zheludova asserts that the trial court erred when it overruled her Civ.R. 59 motion for a new trial. We overrule her assignment of error and affirm the judgment of the trial court.

Zheludova, Vikki Holley’s landlord, had refused to return Holley’s \$680.00 security deposit after her vacation of the property. Holley filed a complaint against Zheludova in small claims court for \$1,720.00, twice the amount of her security deposit, court costs, and emotional-distress damages.

A trial was set for October 13, 2015, but the magistrate continued the matter until December 11, 2015, “by agreement.” At the December 11 hearing, Zheludova’s counsel moved for another continuance, stating that Zheludova was ill. The magistrate denied the motion and heard the matter with Zheludova’s counsel and

Holley present at the hearing. The magistrate awarded Holley \$680.00. The trial court adopted the magistrate's decision entering judgment for Holley.

Zheludova did not appeal the trial court's judgment. Instead, Zheludova moved the trial court for a new trial pursuant to Civ.R. 59, asserting misconduct of the prevailing party and good cause. Zheludova attached to the motion her own affidavit, the itemized damages, and an affidavit from her attorney. In her affidavit, Zheludova claimed that she had provided a written itemization of damages to Holley. Zheludova further asserted that she had been ill and unable to attend trial, and therefore, had been unable to testify or produce the itemization of damages. Zheludova's counsel stated in his affidavit that he had not been able to secure a continuance and that he had not had the itemization of damages at the time of trial.

The trial court denied Zheludova's Civ.R. 59 motion. The trial court reasoned that Zheludova had provided no explanation of why she had not provided her counsel with the information prior to trial, despite the fact that she had had ample opportunity to confer with counsel and to provide him with the necessary information to defend the case. The trial court found that the magistrate's denial of Zheludova's request for a continuance was reasonable.

Zheludova timely appealed, asserting in her sole assignment of error that the trial court erred when it overruled her Civ.R. 59 motion for a new trial. Zheludova claims that there had been misconduct by Holley, and that she had shown "good cause."

Civ.R. 59(A) provides that a court may grant a new trial "to all or any of the parties * * * on all or part of the issues" on several grounds, including "misconduct of the jury or prevailing party" and "in the sound discretion of the court for good cause shown." *See Weber v. Kinnen*, 1st Dist. Hamilton No. C-100801, 2011-Ohio-6718, ¶

10, citing *Harris v. Mt. Sinai Med. Ctr.*, 116 Ohio St.3d 139, 2007–Ohio–5587, 876 N.E.2d 1201, ¶ 22.

The granting or denial of a motion for a new trial under Civ.R. 59(A) is committed to the trial court’s sound discretion, and therefore, will not be reversed on appeal absent a finding that the trial court abused its discretion. *Gindling v. Schiff*, 1st Dist. Hamilton No. C-100669, 2012-Ohio-764, ¶ 9, citing *Rohde v. Farmer*, 23 Ohio St.2d 82, 262 N.E.2d 685 (1970), paragraph one of the syllabus. An abuse of discretion “connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

Here the trial court’s attitude was not unreasonable, arbitrary, or unconscionable. Although Zheludova noted that she had been ill during the trial, she had provided no further information on the matter. *Compare Moore v. Turney*, 1st Dist. Hamilton No. C-120735, 2013-Ohio-4564, ¶ 4-6 (the trial court abused its discretion by not granting Moore a continuance after she had provided paperwork establishing that her absence was unavoidable and involuntary); *but see In re E.A.*, 1st Dist. Hamilton No. C-130041, 2014-Ohio-280, ¶ 8 (the trial court did not abuse its discretion in proceeding without the mother present at a custody hearing because mother’s ability to participate was unknown where she had indicated only that it was too great a burden to travel from Pennsylvania). Furthermore, the trial court found that Zheludova could have provided her counsel with the itemization of damages during the two months prior to trial, but did not do so. Because the trial court’s decision was supported by a sound reasoning process, we find no abuse of discretion. *See In re E.A.* at ¶ 4. Therefore, Zheludova’s sole assignment of error is overruled.

We affirm the judgment of the trial court.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on March 8, 2017
per order of the court _____.

Presiding Judge